

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:10-cr-00161-PLM

v.

Hon. Paul L. Maloney

FEDERICO ZAVALA-QUEZADA
#14859-040,

Defendant.

/

ORDER REGARDING MOTION FOR MODIFICATION OF SENTENCE

Defendant has moved for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) on the basis of Amendment 782 of the Sentencing Guidelines, made retroactive by the Sentencing Commission. This Court requires that all motions for sentence modifications be filed on the court-approved form. Defendant has failed to file the motion on the requisite form. If defendant wishes to proceed with this motion, defendant must carefully fill out the attached form and submit it to the Court.

Defendant shall file a motion on the requisite form within thirty (30) days from the date of entry of this order. Thereafter, the motion will be handled under the attached "Procedures for Handling Motions for Sentencing Modifications Under 18 U.S.C. § 3582(c)(2), (Amendment 782)," adopted by the Court on September 12, 2014, available to counsel on the Court's website. If defendant fails to submit a motion in proper form within the time allowed, the motion will be dismissed without prejudice.

IT IS SO ORDERED.

Dated: December 12, 2014

/s/ Paul L. Maloney

PAUL L. MALONEY

Chief United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:10-cr-00161-PLM

v.

Hon. Paul L. Maloney

FEDERICO ZAVALA-QUEZADA
#14859-040,

Defendant.

Motion for Modification or Reduction of Sentence
Pursuant to 18 U.S.C. § 3582(c)(2)
(Guideline Amendment No. 782)

I hereby request a modification or reduction of my sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 782 to the United States Sentencing Guidelines, which made a reduction in the base offense level for drug offenses retroactive as of November 1, 2014, and in support of my motion state as follows:

1. I am serving a term of imprisonment.
2. My sentence was based, at least in part, on a drug quantity. _____
(Yes or No)
3. I was sentenced in the Western District of Michigan on _____
(date)
to a term of _____ months in prison. My total offense level was _____
and my criminal history category was _____.
4. My projected release date is _____. I understand that
the Amendment does not authorize release of any defendant before
November 1, 2015.
5. I hereby request a court-appointed attorney. _____ (Yes or No)
If yes, please complete the attached Financial Affidavit.
(Note: appointment of counsel is discretionary with the Court.)

**WITH THE EXCEPTION OF THE FINANCIAL AFFIDAVIT, PLEASE DO NOT SUBMIT OR
ATTACH ANY OTHER MATERIALS AT THIS TIME OR YOUR MOTION WILL BE REJECTED
AND RETURNED.**

Signature of Petitioner: _____ Date: _____

Print or Type Name: Federico Zavala-Quezada #14859-040 Register #: _____

Current Address: _____

****NOT FOR PUBLIC DISCLOSURE****

USDC - Western District of Michigan

PERSONAL DATA / CASE INFORMATION

(To be completed by ALL defendants)

USA v. _____

Case Number _____

Full Name _____

CHARGE/OFFENSE (describe if applicable & check box)

 Felony MisdemeanorAddress _____

Phone (_____) _____

FINANCIAL AFFIDAVIT

(To be completed in support of request for attorney, expert or other court services without payment of fee)

EMPLOY- MENT	Are you now employed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Am Self-Employed		
	Name and address of employer: _____		
	IF YES, how much do you earn per month? _____		IF NO, give month and year of last employment _____
			How much did you earn per month? \$ _____
ASSETS OTHER INCOME	If married is your Spouse employed? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	IF YES, how much does your Spouse earn per month? \$ _____		If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____
	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No		
PROP- ERTY	RECEIVED IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY \$ _____ THE SOURCES _____		
	SOURCES _____		
	Have you any cash on hand or money in savings or checking accts? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES, state total amount \$ _____		
OBLIGA- TIONS & DEBTS	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	VALUE IF YES, GIVE THE VALUE AND \$ DESCRIBE IT _____ _____ _____		
	DESCRIPTION _____		
DEPENDENTS	MARITAL STATUS { _____ SINGLE _____ MARRIED _____ WIDOWED _____ SEPARATED OR _____ DIVORCED		
	Total No. of Dependents _____		
	List persons you actually support and your relationship to them _____ _____ _____		
DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)	APARTMENT OR HOME: { _____ _____ _____ _____ _____		
	Creditors _____ _____ _____ _____ _____		
	Total Debt _____ _____ _____ _____ _____		
Monthly Paymt. _____ _____ _____ _____ _____			

I certify under penalty of perjury that the foregoing is true and correct. Executed on _____

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED) _____ Form read to defendant in his/her native language and completed by the () Interpreter () Probation Officer.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

**PROCEDURES FOR HANDLING MOTIONS FOR
SENTENCING MODIFICATIONS UNDER 18 U.S.C. § 3582(c)(2)
(AMENDMENT 782)**

This memorandum sets forth the procedures adopted by the United States District Court for the Western District of Michigan for consideration of motions by defendants for sentence modifications arising from Amendment 782 of the United States Sentencing Guidelines. This amendment, effective November 1, 2014, retroactively modified the Drug Quantity Table across the board by 2 levels. The Amendment does not authorize release of any defendant before November 1, 2015. These procedures are intended to govern the expeditious handling of motions for sentence modification in the majority of cases; an individual judge, however, is free to alter these procedures to address the circumstances of any particular case.

As used in this memorandum, an *eligible defendant* means: (1) a person serving a term of imprisonment under a criminal judgment issued by this Court; (2) whose sentencing guideline offense level was computed in whole or in part by reference to a drug quantity; and (3) whose guideline range is lowered by application of Amendment 782 of the U.S. Sentencing Guidelines.

I. FORM AND FILING OF MOTIONS

A. Form of Motions

Motions must be filed on the court-approved form. No memorandum of law or attachments may accompany the motion. Non-conforming motions will be returned to the submitting party by order of Court.

B. Filing of Motion

1. By the Federal Defender:

- a. E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office;
- b. The motion will include a request for appointment of FPD and financial affidavit.

2. By a panel attorney who represented defendant at sentencing or on appeal:

- a. E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's office;
- b. The motion will include a request for appointment of the panel attorney and financial affidavit.

3. By retained counsel: E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's office.

4. By a *pro se* defendant:

- a. Filed on paper and scanned into the CM/ECF system, with a copy automatically sent by CM/ECF to the U.S. Attorney's office;

- b. May request appointment of counsel in the body of the form motion.

C. Appointment of Counsel

Appointment of counsel is discretionary with the Court at any stage of the proceedings.

II. INITIAL CONSIDERATION

A. Initial Review (Step A)

1. Immediately upon filing, the judge's office will review the motion to determine whether the defendant has been previously identified by the Sentencing Commission as an inmate potentially affected by Amendment 782.

- a. If so, the Court will move to Step B.

b. If not, the case will be referred to Probation for a review of the file, to determine whether the movant is an *eligible defendant*. The Probation Office will file a short report stating whether or not the movant appears to be an *eligible defendant* and the basis for that conclusion. The Probation Office will submit the Eligibility Report by the CM/ECF system within 7 business days, unless the Probation Office file is in storage. Pro se movants must be served by mail, with proof of service. The Court will issue an order directing a response to the report by pro se defendants. Any party objecting to the conclusion of the Probation Office must submit the objection within 14 days of service. Counsel must file and serve objections by the CM/ECF system, but must serve a pro se movant by mail, with proof of service.

2. If the Court finds that defendant is clearly ineligible, the Court may dismiss the motion. If the Court determines that the movant may be an *eligible defendant*, the Court will move to Step B.

B. Triage of Motions (Step B)

1. Motions by potentially *eligible defendants* with a release date within 12 months of November 1, 2015 – the earliest possible release date under the Amendment – will receive priority, and the Court will immediately move to Step C.

2. Motions by potentially *eligible defendants* with release dates after November 1, 2016, will be held in abeyance. The Court will reach those motions, moving to Step C, after more urgent cases are decided.

C. Issuance of Order for Sentence Modification Report (Step C)

1. The Court will order the Probation Office to prepare a Sentence Modification Report, addressing the following issues:

a. a brief procedural history of sentencing decisions, including whether the original sentence was imposed under *Booker*, reflected any departures or variances, or was reduced under U.S.S.G. § 5K1.1 or Rule 35(b);

b. the original Guideline calculation and a recalculation of the Guideline range in accordance with U.S.S.G. § 1B1.10(b)(1);

- c. a statement whether the movant is an *eligible defendant* and the basis for that conclusion;
- d. a statement whether the movant received credit in anticipation of Amendment 782 based on a variance;
- e. any information readily available to Probation from the BOP concerning defendant's post-sentencing conduct or misconduct;
- f. any information available to Probation concerning the danger to any person or the community that may be posed by a reduction in defendant's sentence;
- g. a recommendation for disposition of the motion.

2. The U.S. Probation Office will be directed to prepare Sentence Modification Reports in a sequence consistent with projected release dates of the moving defendants, assuring those defendants eligible for imminent release are addressed first by the Court. Once all requested reports for inmates with projected release dates within 12 months of November 1, 2015, are submitted to the Court, the U.S. Probation Office will prepare reports for moving defendants with release dates after November 1, 2016, in a sequence reflecting their projected release dates.

3. The Probation Office will submit the Sentence Modification Report by the CM/ECF system (access restricted to the Court, the U.S. Attorney, and counsel for movant).

4. The Probation Office will submit the original Presentence Report by the CM/ECF system (access restricted to the Court, the U.S. Attorney, and counsel for movant), if not already on the docket.

D. Submissions by the Parties

1. Defendant (or counsel) will have 21 days after service of the Sentence Modification Report to file a brief and supporting documents, addressing any legal or factual issue relevant to the motion for reduction of sentence.

2. Within 21 days of service of defendant's brief, the Government may file its brief and supporting materials, addressed to the same subjects.

3. Submissions in support of or in opposition to a motion must not exceed 20 pages, including attachments. Counsel must submit these documents by the CM/ECF system, but serve any pro se movant by mail, with proof of service.

4. At any time before a decision on the motion, the parties may file with the Court a joint recommendation for disposition of the motion, understanding that the ultimate decision is in the Court's discretion.

E. Hearing

A hearing will be scheduled only if the Court determines that a genuine issue of material fact must be resolved or that oral argument will be beneficial to the Court. A defendant's presence for sentence modification is not required by the Federal Rules of Criminal Procedure. Fed. R. Crim. P. 43(b)(4). If either party seeks a hearing or defendant's personal presence, the party's brief must specifically request such relief and give reasons in support.